



Report to the Auburn City Council

Action Item

Agenda Item No. 7

City Manager's Approval

To: Honorable Mayor and City Council Members
From: Rich Owens, Chairman, Technology Commission
Andy Heath, Administrative Services Director
Date: August 13, 2012
Subject: Communication Telephone / Voicemail System Upgrade

The Issue

Shall the City Council approve the execution of a Network Service and Lease Agreement with Mahogany Communications, Inc. as it relates to the installation of a hosted Voice Over Internet Protocol (VOIP) Telephone and Voicemail System?

Conclusions and Recommendations

By **RESOLUTION** authorize the City Manager or his designee to execute a three-year Network Service and Lease Agreement with Mahogany Communications, Inc. as it relates to the installation of a hosted Voice Over Internet Protocol (VOIP) Telephone and Voicemail System in an amount not to exceed \$50,020 in year 1, \$40,620 in year 2 and \$40,620 in year 3.

Background

The efficient and effective delivery of services citywide is heavily dependent on an effective and efficient telephone / voicemail technology solution (telephone system). Although the City has used the existing telephone system, the "Toshiba Strategy" for approximately seventeen (17) years, the inherent technology has become significantly outdated and to some extent, unsupported. Furthermore, the existing telephone system is limited in terms of its ability to accommodate new users and storage capacity.

Access to a robust telephone and e-mail system is a mission-critical element to providing a high level of efficient and effective services to the community. Taking advantage of advances in telephony technology over the past ten years is not possible without considering implementation of a new system. Implementation of a new phone system will enable the City to better integrate networked systems and effortlessly store necessary data. Additionally, upgrading the telephone system provides needed scalability - allowing for the seamless addition and deletion of system users without having to pay an exorbitant amount finding resources to assist with the existing unsupported system.

As a means to initiate the process of replacing the City's telephone system, staff presented a replacement process framework and timeline to the City Council on February 27, 2012. Subsequent to the City Council approving a motion for staff to move forward, the City issued a Request for Proposals (RFP) from interested vendors on March 19, 2012. Over the course of the last four months, City staff and members of the City's Technology Commission have been integrally involved with reviewing RFP responses, attending demonstrations, and negotiating terms and conditions for a recommended agreement.

Analysis

Request for Proposals (RFP) Process

In an effort to assure the City implements a robust, state-of-the-art telephone system at a competitive price, staff issued an RFP inviting interested companies to submit proposals for implementation of their system. As previously mentioned, the RFP was issued on March 19, 2012 to parties who had already expressed interest in working with the City, and was also posted on the City's website to attract additional responses. The RFP asked that companies provide information on their ability to integrate and facilitate a wide array of telephony and voicemail functions. Additionally, the RFP was open to any vendor providing telephone and voicemail services and/or a fully integrated system – either installed on-site or as a hosted solution. Completed proposals were due on April 27, 2012 – a total of nine proposals were received:

- Advantel, Sacramento, CA
- American Telesource, Elk Grove, CA
- American Telephone and Telegraph (AT&T), Fresno, CA
- Carousel, Nevada City, CA
- Frontier Communications, Emeryville, CA
- Mahogany Communications (Simple Signal), Newark, DE (**HOSTED**)
- Packet Fusion (ShoreTel), Sunnyvale, CA
- Presidio, Sacramento, CA
- Pro Phonos / Exwire, Inc., Colfax, CA (**HOSTED**)

Proposals received were evaluated based on capability, qualifications, references, method of approach, and price. Proposals were also evaluated for overall responsiveness to the information requested by the City to effectively compare pertinent information. As proposals were evaluated, it became clear that the City would ultimately need to consider the merits of implementing a hosted VOIP telephone system (noted as **HOSTED** above) versus having to install and maintain the new telephone equipment on-site. Subsequent to discussions between staff and Technology Committee members, it was decided to invite the two most responsive firms back for a thorough demonstration – the firm that submitted the most responsive on-site proposal (Packet Fusion (ShoreTel)); and that which submitted the most responsive hosted solution (Mahogany Communications (Simple Signal Technology)).

Demonstrations of the two systems were held in late May 2012 and attended by key City staff and Technology Committee members. Subsequent to the demonstration of both systems, staff needed to consider the merits of implementing a hosted solution versus an on-site solution.

Hosted Telephone System Solution

There are many benefits that come with the implementation of a hosted telephone system solution versus an on-site solution. Benefits that ultimately reduce costs and/or reduce staff resources required to maintain the system include:

- No need to physically maintain switch/server equipment in a cool, clean and dedicated room with backup power
- Reduced maintenance costs with respect to adding, moving, reassigning or removing employees from the system - no need to call a costly technician
- Essentially unlimited scalability – ease of adding users to system
- Seamless implementation of market-driven upgrades
- No need for multiple dedicated phone lines – results in cost savings
- Lower cost of ownership with outsourcing of core platform and management
- Increased reliability, resiliency and survival with carrier-grade platforms and system redundancies (Redundant Network Operations Centers located in Irvine, CA and Denver, CO)

Additionally, a hosted VOIP telephone system increases core functionalities by:

- Allowing interaction between the Microsoft Office platform and the hosted telephone system (i.e. ability to download voicemail to email, etc.)
- Phones are powered over the Ethernet
- “Follow me calling” between individual phone stations and cell phones (Smart cell phone can have same functionality as regular phone station)
- Video calling and conferencing
- Most phone system maintenance can be performed remotely
- Caller identification / Caller screening
- Call recording is provided within the system for public safety functions
- Highly flexible auto-attendant functions
- Supports E-911

Given the overall benefits with the implementation of a hosted VOIP telephone system coupled with the responsiveness of the Mahogany proposal, staff and the Technology Commission recommend implementation of the Mahogany Simple Signal VOIP Phone System.

Hosted VOIP Telephone System Costs

Costs for the recommended implementation of a three-year network service and lease agreement are noted below:

Year 1 (includes one-time installation and training costs)

	Monthly Cost / Savings	Annual Cost / Savings
Hardware Lease (\$1 buyout)	\$ 835.09	\$ 10,021.08
Dedicated MPLS Connection	310.00	3,720.00
Hosted VOIP Costs - Support	2,240.00	26,880.00
Installation Fee	N/A	8,500.00
On-Site Training	N/A	900.00
Line Elimination Savings (est)	<u>(1,300.00)</u>	<u>(15,600.00)</u>
Total Year 1 Costs:	<u>\$ 2,085.09</u>	<u>\$ 34,421.08</u>

Years 2 and 3

	Monthly Cost / Savings	Annual Cost / Savings
Hardware Lease (\$1 buyout)	\$ 835.09	\$ 10,021.08
Dedicated MPLS Connection	310.00	3,720.00
Hosted VOIP Costs - Support	2,240.00	26,880.00
Line Elimination Savings (est)	<u>(1,300.00)</u>	<u>(15,600.00)</u>
Total Year 2 and 3 Costs:	<u>\$ 2,085.09</u>	<u>\$ 25,021.08</u>

Costs for years beyond the initial 3-year Network and Service Agreement period will exclude the hardware lease costs, as the City will own the equipment subsequent to a \$1 buyout. Annual costs are estimated to be approximately \$15,000 annually in years 4 and beyond.

Mahogany Communications Inc.

Mahogany Communications, Inc. (Mahogany) is located in Newark, Delaware, and is an installer and manager of Internet Protocol (IP) communication services for its customers. Mahogany is proposing to install a turn-key hosted telecommunications solution for the City of Auburn through their strategic relationship with Simple Signal, the largest provider of wholesale hosted IP Telephony Communication solutions in the United States.

Mahogany listed among its references several corporations and a technical school, all but one of which were highly favorable of Mahogany's services and capabilities. The reference review team comprised of Technology Committee members recommends moving forward with Mahogany based on information received via the reference calls.

Based on the responses received, the overall cost bid, and the positive reference checks, staff and the Technology Commission recommend the City enter into an agreement with Mahogany Communications, Inc. to install and provide services for a VOIP Telephone and Voicemail System.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to execute a three-year Network Service and Lease Agreement with Mahogany Communications, Inc. as it relates to the installation of a Voice Over Internet Protocol (VOIP) Telephone and Voicemail System in an amount not to exceed \$50,021.08 in year 1, \$40,621.08 in year 2 and \$40,621.08 in year 3.
2. Do not execute an agreement with Mahogany Communications, Inc. and direct staff accordingly.

Fiscal Impact

Funds to implement the aforementioned recommendations are available in Fund Balance from the following funds (funded costs presented are net of \$15,600 annual estimated savings referenced above):

	Year 1	Year 2	Year 3
Facilities and Equipment Replacement (FEP) Fund	\$ 9,400.00	\$ 0.00	\$ 0.00
General Fund	\$ 22,068.59	\$ 22,068.59	\$ 22,068.59
Sewer Fund	\$ 1,526.29	\$ 1,526.29	\$ 1,526.29
Transit Fund	\$ 250.21	\$ 250.21	\$ 250.21
Airport Fund	\$ 1,175.99	\$ 1,175.99	\$ 1,175.99

- Exhibit 1: Mahogany VOIP Telecommunications Price Proposal
- Exhibit 2: Mahogany Service Agreement (costs will be populated with not-to-exceed amounts)
- Exhibit 3: Mahogany Network Service Level Agreement
- Exhibit 4: Mahogany Terms and Conditions Governing Services
- Exhibit 5: Boilerplate Lease Agreement (costs will be populated with not-to-exceed amounts)

1 RESOLUTION NO. 12-
2 RESOLUTION APPROVING COMMUNICATION TELEPHONE / VOICEMAIL
3 SYSTEM UPGRADE
4 -----

5 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

6 That the City Council of the City of Auburn does hereby authorize the
7 City Manager or his designee to execute a three-year Network Service and
8 Lease Agreement with Mahogany Communications, Inc. as it relates to the
9 installation of a hosted Voice Over Internet Protocol (VOIP) Telephone and
10 Voicemail System in an amount not to exceed \$50,200 in year 1, \$40,620 in
11 year 2, and \$40,620 in year 3.
12

13 DATED: August 13, 2012
14

15 _____
Kevin Hanley, Mayor

16 ATTEST:
17

18 _____
Joseph G. R. Labrie, City Clerk
19
20

21 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
22 that the foregoing resolution was duly passed at a regular meeting of the City
Council of the City of Auburn held on the 13th day of August 2012 by the
following vote on roll call:
23

24 Ayes:

25 Noes:

26 Absent:
27
28

Joseph G. R. Labrie, City Clerk

Presented by:

Exhibit 1



Mahogany Communications, Inc.

**Voice Over IP (VoIP)
Telecommunications Proposal Presented
to:**

City of Auburn, California



This proposal contains proprietary and confidential information of MAHOGANY COMMUNICATIONS and may contain proprietary information of its Channel, Manufacturing and/or other potential teaming partners. ("Information"). The Information is provided subject to the condition that it shall not be disclosed outside of the City of Auburn and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than internal evaluation of this proposal. City of Auburn's retention and review of this proposal shall be deemed acceptance of this condition. Mahogany Communications reserves the right to request the return of this Information, and any copies made in connection with the evaluation of this proposal, in whole or in part, at any time, at its sole discretion

Investment Option 1:

CITY OF AUBURN (\$1.00 Purchase Option Lease)					3 Year Lease
Part Number	Description	Qty	Unit Price	Extended Price	
2200-12550-025	Polycom 550 IP Phone (4-Lines)	64	\$ 245.00	\$ 15,680.00	\$ 478.24
PAP2T	Cisco Analog Adapter	15	\$ 60.00	\$ 900.00	\$ 27.45
SGE2000P	Cisco 24 Port 10/100/1000 PoE Switch	1	\$ 1,300.00	\$ 1,300.00	\$ 39.65
SGE2010P	Cisco 48 Port 10/100/1000 PoE Switch	1	\$ 2,000.00	\$ 2,000.00	\$ 61.00
Monitoring	24 Months Support	2.5	\$ 3,000.00	\$ 7,500.00	\$ 228.75
Total				\$ 27,380.00	\$ 835.09

Monthly Recurring Fees:

64- User Hosted VoIP Solution:	\$ 2,240.00
15- Voice Mail Only Users:	Included
20- Concurrent Call Licenses:	Included
Auto Attendant:	Included
Call Recording:	Included
Conference Bridge:	Included
Unlimited Local/LD Calling:	Included
Moves/Adds/Changes:	Included
Monitoring of Voice Platform:	Included
911/E911:	Included
Hardware Maint/Support:	<u>Included</u>
Monthly Service Total:	\$ 2,240.00

Network Connection:

1.54Mbps MPLS Connection:	\$ 310.00
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Proposed Total Monthly Cost:

Hosted VoIP Solution:	\$ 2,240.00
3Mbps MPLS Connection:	\$ 310.00
Hardware Lease:	\$ 835.09 (3year \$1.00 Purchase Option)
Total Proposed Monthly Payment:	\$ 3,385.09

One Time Installation and Training Fee:

Installation Fee:	\$ 8,500.00
(3) Sessions of On-site Training:	\$ 900.00
Total One Time Fee:	\$ 9,400.00

Investment Option 2:

CITY OF AUBURN (Outright Purchase)				
Part Number	Description	Qty	Unit Price	Extended Price
2200-12550-025	Polycom 550 IP Phone (4-Lines)	64	\$ 245.00	\$ 15,680.00
PAP2T	Cisco Analog Adapter	15	\$ 60.00	\$ 900.00
SGE2000P	Cisco 24 Port 10/100/1000 PoE Switch	1	\$ 1,300.00	\$ 1,300.00
SGE2010P	Cisco 48 Port 10/100/1000 PoE Switch	1	\$ 2,000.00	\$ 2,000.00
Monitoring	24 Months Support	2.5	\$ 3,000.00	\$ 7,500.00
Total				\$ 27,380.00

Monthly Recurring Fees:

64- User Hosted VoIP Solution: \$ 2,240.00
15- Voice Mail Only Users: Included
20- Concurrent Call Licenses: Included
Auto Attendant: Included
Call Recording: Included
Conference Bridge: Included
Unlimited Local/LD Calling: Included
Moves/Adds/Changes: Included
Monitoring of Voice Platform: Included
911/E911: Included
Hardware Maint/Support: Included
Monthly Service Total: \$ 2,240.00

Network Connection:

1.54Mbps MPLS Connection: \$ 310.00

Proposed Total Monthly Cost:

Hosted VoIP Solution: \$ 2,240.00
3Mbps MPLS Connection: \$ 310.00
Total Proposed Monthly Payment: \$ 2,550.00

One Time Hardware, Installation and Training Fee:

Hardware Purchase: \$ 27,380.00
Installation Fee: \$ 8,500.00
(3) Sessions of On-site Training: \$ 900.00
Total One Time Fee: \$ 36,780.00



Customer: Client Name

Mahogany Communications, Inc. Service Agreement

("Customer"), _____ established under the laws of the State of _____, having its principal offices at _____, intending to be legally bound, hereby purchases the Services described and detailed herein from Mahogany Communications Inc. effective on the Service Commencement Date, set forth below, which for all purposes shall be deemed the effective date of this Agreement. Mahogany Communications Inc. and Customer agree that all such services are subject to the TERMS and CONDITIONS GOVERNING SERVICE and any Specific Terms and Conditions specified within this Agreement.

Services Ordered:

Qty	Service Description	One Time Fee	Monthly Fee	Total Monthly Fee
	IP Telephony STANDARD SEATS including Voicemail, and unlimited local, on-net and US Domestic LD calls		\$	\$
	Auto Attendant		\$	\$
	Hunt Group			
1	Initial Set-up and Training	\$	\$	\$
	Total	\$		\$

Service Investment Notes:

1. **Pricing based on 36 month service agreement**
2. Taxes and fees are not included
3. Payment terms net 15 days

Number Assignment Costs:

		<u>QTY</u>	<u>EXT COST</u>
1. Porting existing numbers	\$ 25.00 each (NRC)	_____	_____
2. Assign new local numbers	\$ 25.00 each (NRC)	_____	_____
3. Assign new toll free numbers	\$ 25.00 each (NRC)	_____	_____
4. Monthly toll free number	\$ 15.00 each (MRC)	_____	_____
5. DID reservations	\$ 2.00 each (MRC)	_____	_____

Usage:

1. Local \$ unlimited
2. "on-net" between sites on VoIP service \$ unlimited
3. US Domestic Long Distance \$ unlimited
4. International Long Distance \$ varies

Mahogany Communications, Inc.
930 Old Harmony Rd.
Suite A
Newark, DE 19713

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Service Agreement



Hardware:

Recommended hardware includes:

1. Polycom Soundpoint 550 IP Phones or Polycom Soundpoint 331
2. EdgeMarc 4500 Quality Assurance Device

Scope of Work:

1. Mahogany Communications Inc. Responsibilities:
 - a. Provide Hosted IP Telephony service per conditions outlined above
 - b. Coordinate provisioning, set-up and installation of service and IP Phones
 - c. On-Site training for all users
2. Client Responsibilities:
 - a. Provide location where service is to be installed
 - b. Provide list of end users
 - c. Provide resource to conduct pre-installation meeting to understand requirements prior to installation
 - d. Site Addresses and Primary contact person

Primary Contact:

Phone Number: _____ Fax: _____ Email: _____



Service Features:

Standard Service

The following features are included in the proposed IP Telephony offering. Each end user will have the capability to manage their individual features along with a central administrative web portal for managing each Group's services.

Personal Services

Alternate Numbers	Call Forwarding Ring Splash
Anonymous Call Rejection	Call Screening by Digit Patterns
Call Forwarding Selective	Calling Line ID Delivery per Call
Calling Line ID Blocking	Cancel Call Waiting
Calling Name Delivery	Distinctive Alert/Ringing
CommPilot Express	Printable Group Directory
LDAP Directory Integration	Selective Call Acceptance
Priority Alert/Ringing	Simultaneous Ring – Personal
Shared Call Appearance	Extension Dialing
Dial Tone/Connectivity	Call Return/Call Trace
Call Forwarding	Cancel Call Waiting per Call
Call Transfer/Call Waiting	Calling Line ID Blocking per Call
Calling Line ID Delivery	Do Not Disturb
Consultation Hold	Speed Dial
Last Number Redial	Voice Portal
Three-Way Calling	Message Management
Voice Mailbox	Voice Message Waiting Indication
Voice Messaging Call Back	Voice Messaging to E-Mail
Voice Messaging Notification	Voice Mailbox Integration
Call Notify	

Hold/Transfer
3 way phone list

Administrative Services

Administrative Web Portal
Account Codes/Authorization Codes
Call Capacity Management
Call Intercept
Call Park/Call Pick-Up
Calling Group ID Delivery
Calling Plans (Incoming/Outgoing)
Configurable Extension Dialing
Configurable Feature Codes
Configurable Feature Code Prefix
Device/Group Resource Inventory Reporting
Enhanced Outgoing Calling Plan
Hunt Groups
Music on Hold



Special Terms and Conditions:

Ordering. Mahogany Communications Inc. shall provide and Customer shall accept the services listed herein, and on any attachment or amendment hereto or work order hereunder (the "Services"). To the extent the offering of the Services or any part thereof is subject to regulation, such Services may be provided by regulated entities. Customer may issue work orders supplementing the Services, which shall be effective upon Mahogany Communications Inc.'s acceptance or performance thereof. The TERMS and CONDITIONS GOVERNING SERVICE shall apply to all such accepted work orders.

Service Term. The initial term of the Services, ("Service Term") shall be **36 Months** from the Service Commencement Date, as set forth herein, and shall be renewable on a (12) month basis, unless terminated by Customer on 30 (30) days written notice prior to the expiration of the then-current term. The Services provided hereunder shall commence on or about _____ (the "Service Commencement Date").

Cancellation: . In the event that the Customer elects to cancel this Agreement prior to Service Commencement Date, Customer will be liable for early termination charges as set forth in the TERMS and CONDITIONS GOVERNING SERVICE.

LIMITATIONS ON SERVICE: EMERGENCY DIALING (E911) VIA THE SERVICE MAY BE ADVERSELY AFFECTED BY USE OF THE PUBLIC INTERNET, RELOCATION OF THE IP-COMPATIBLE EQUIPMENT FROM THE REGISTERED LOCATION(S), USE OF NUMBERS OUTSIDE THE RATE CENTER TO WHICH THEY ARE ASSIGNED, LOSS OF ELECTRICAL POWER, BROADBAND CONNECTION FAILURE, OR DELAY IN ADVISING MAHOGANY COMMUNICATIONS INC. OF A CHANGE IN REGISTERED LOCATION. CUSTOMER IS ENCOURAGED TO ENSURE THAT A TRADITIONAL LANDLINE SERVICE IS RETAINED FOR BACK-UP CALL PURPOSES AND THAT ALL SITE USERS ARE AWARE OF THESE LIMITATIONS AND THE LOCATION OF THE EMERGENCY BACK-UP PHONE(S).

By its signature below, Customer is authorizing Mahogany Communications Inc. to process this Agreement. Customer hereby acknowledges that it has read and understands the TERMS and CONDITIONS GOVERNING SERVICE and foregoing Limitations on Service.

CLIENT NAME (CUSTOMER)

BY: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

MAHOGANY COMMUNICATIONS INC. (CORPORATION)

BY: _____

PRINTED NAME: _____

TITLE: _____

ACCEPTANCE DATE: _____

Mahogany Communications, Inc.
930 Old Harmony Rd.
Suite A
Newark, DE 19713

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Service Agreement



Network Service Level Agreement

The following service components will be covered within the proposed and implemented T1 solution.

1. Average Network Availability
2. Average Latency Service Level
3. Average Packet Delivery Service Level
4. Average Jitter Service Level

Mahogany Communications Inc. Service Level Agreement

The following service components will be covered within the hosted IP Telephony (IP PBX) solution.

1. Call Success Rate Service Level

Call Success Rate (CSR) is defined as the ability to originate and terminate calls with reasonably acceptable voice quality.

The CSR Service Level objective for **Mahogany Communications Inc.** Hosted PBX Plus service is 100% for On-Net calls and calls to local Public Switched Telephone Network (PSTN) where **Mahogany Communications Inc.** has a gateway to the particular PSTN, excluding mobile calls. The CSR is based on the successful call set up between the On-Net originating number, and On-Net or Off-Net terminating number.

If there is a service interruption, then Customer must open a trouble ticket with **Mahogany Communications Inc.** Network Operations Center (NOC) and provide **Mahogany Communications Inc.** the affected originating and terminating numbers. **Mahogany Communications Inc.** will trouble shoot the affected numbers using the following methods:

- NOC originated Hosted PBX test calls to originating and terminating numbers
- Standard network IP layer tools and measurements to troubleshoot IP network issues
- Use standard POTS line to test originating and terminating numbers for diverse call path testing

In the event **Mahogany Communications Inc.** does not meet the CSR Service Level and it is determined that the service interruption is due to **Mahogany Communications Inc.** network, using the tests defined above, then Customer is entitled to a 2% service credit of the Hosted PBX Monthly Recurring Seat Charge per affected Seat with the corresponding phone number per Day Event. The CSR excludes busy signals, PSTN or other third party network outages.

Day Event is defined as one (1) or more service interruption events in a calendar day.

2. Call Manager Portal Access Service Level

The Hosted PBX Call Manager Portal (CMP) availability objective is 100%.

In the event the CMP is not accessible via the public Internet, Customer must open a trouble ticket with the **Mahogany Communications Inc.** NOC and provide the publicly "route-able" IP address, as defined by the Internet Engineering Task Force (IETF) specification, for the Customer's access device.

Mahogany Communications Inc. will troubleshoot the affected IP address using 'Ping', 'Trace Route' and other standard TCP/IP testing tools.

Network Address Translated (NAT) and Private IP addresses are not covered under the CMP Service Level.

If **Mahogany Communications Inc.** does not meet the CMP Service Level due to **Mahogany Communications Inc.** network performance, then Customer is entitled to a credit equal to 2% of the Hosted PBX Monthly Recurring Seat Charge per affected Seat per Day Event. Credits will not be issued if **Mahogany Communications Inc.** determines, using tests defined above, that Customer's inability to access the CMP via the public Internet is due to third party Service Providers.

3. Credit Terms

The maximum Service Credit amount in a month shall not exceed the Hosted PBX Monthly Recurring Seat Charge for the affected Seat. Credit for any given month will be applied within two (2) months from the month in which the credit is accrued.

Credits are calculated after deduction of all discounts and other special pricing considerations on the Hosted PBX Monthly Recurring Seat Charge for the affected Customer, excluding third party charge, taxes and other surcharges.

4. Exclusions

Computation of Service Level parameters and credits listed in Sections 1 to 5 shall exclude the following circumstances:

- (a) Planned service outages or routine maintenance. **Mahogany Communications Inc.** will provide 72 hours advanced notice prior to conducting any scheduled maintenance.
- (b) Interruptions during any period when the Customer elects not to release the Service for testing or repair and continues to use the Service on an impaired basis.
- (c) Interruptions during any period when the Customer has not released the Service to **Mahogany Communications Inc.** for maintenance or for the implementation of a Customer Order.
- (d) Interruptions due to failure of power, Customer Premises Equipment or Customer access circuit provided by Customer or other third parties.
- (e) Interruptions caused by the negligence of the Customer, including the provision of inaccurate information and failure to follow agreed-upon procedures.
- (f) Interruptions not reported to **Mahogany Communications Inc.**
- (g) Interruptions occurring prior to Service Date.
- (h) Interruptions due to any Force Majeure event.
- (i) Delay in service implementation due to incomplete a Customer Order.
- (j) Interruptions due to chosen MPLS network provider

MAHOGANY COMMUNICATIONS INC.

TERMS AND CONDITIONS GOVERNING SERVICES

Customer agrees to the terms and conditions contained herein when utilizing any of the Mahogany Communications Inc. Services.

Intended Use

Customer agrees to use the Services only for lawful purposes. Unauthorized transmission or storage of any information, data, or material in violation of any Federal or State law or regulation, including without limitation to illicit transmission or use of copyrighted material, obscene material, material protected by trade secrets or materials designed to harass or interfere with others, is strictly prohibited. Customer shall strictly comply with the rules of any other network Customer accesses through the use of the Services. Mahogany Communications Inc. has no obligation to monitor the content of communications sent, posted, linked or otherwise conveyed by Customer but reserves the right to do so including, but not limited to, where directed to do so by law enforcement authorities. For the purposes of this Agreement, to the extent that an employee or third party uses the Services provided hereunder use by such employee, agent or third party use shall be deemed Customer's use for the purposes of this Agreement.

Prohibited Uses

Customer is expressly prohibited from reselling or transferring the Services or Mahogany Communications Inc. equipment to any other person for any purpose, without express written permission from Mahogany Communications Inc. in advance. In addition, Customer is expressly prohibited from using the Services for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, call centers, or for uses that result in excessive usage inconsistent with normal business usage patterns. If Mahogany Communications Inc. determines that Customer is reselling the Services or engaging in any of the aforementioned practices, Mahogany Communications Inc. reserves the right, without advance notice, to immediately terminate or modify the Services, or to change Customer's calling plan to a different offer on a prospective basis, and in addition, to assess addition charges for each month in which excessive usage occurred.

Use of Mahogany Communications Inc. Network Services

Customer shall access the Mahogany Communications Inc. network provided in connection with the Services in accordance with the manuals or instructions provided by Mahogany Communications Inc. Customer shall not make any alterations or additions to equipment provided under this Agreement, or any accompanying documents, or attempt to maintain or repair it. Mahogany Communications Inc. will not be liable for Customer errors in utilizing Mahogany Communications Inc. self-provisioning and management tools made available by Mahogany Communications Inc. via its web portal. Such equipment shall be used by Customer only at the site location(s) designated in the Customer Order Form (the "Registered Location(s)") and shall not be resold, removed or relocated by Customer, (except within the Registered Location to which the equipment was originally registered), except as expressly authorized in writing by Mahogany Communications Inc.

E911 Acknowledgment

LIMITATIONS ON SERVICE: EMERGENCY DIALING (E911) VIA THE SERVICE MAY BE ADVERSELY AFFECTED BY USE OF THE PUBLIC INTERNET, RELOCATION OF THE IP-COMPATIBLE EQUIPMENT FROM THE REGISTERED LOCATION(S), USE OF NUMBERS OUTSIDE THE RATE CENTER TO WHICH THEY ARE ASSIGNED, LOSS OF ELECTRICAL POWER, BROADBAND CONNECTION FAILURE, OR DELAY IN ADVISING MAHOGANY COMMUNICATIONS INC. OF A CHANGE IN REGISTERED LOCATION. CUSTOMER IS ENCOURAGED TO ENSURE THAT A TRADITIONAL LANDLINE SERVICE IS RETAINED FOR BACK-UP CALL PURPOSES AND THAT ALL SITE USERS ARE AWARE OF THESE LIMITATIONS AND THE LOCATION OF THE EMERGENCY BACK-UP PHONE(S).

CUSTOMER ACKNOWLEDGES THAT THE EQUIPMENT IS REGISTERED TO THE REGISTERED LOCATION AND THAT EMERGENCY SERVICES, INCLUDING, WITHOUT LIMITATION, E911 CALLS, WILL BE AFFECTED IF EQUIPMENT IS MOVED TO ANOTHER LOCATION. EMERGENCY PERSONNEL WILL NOT BE ABLE TO ACCURATELY LOCATE THE PREMISES FROM WHICH THE CALL ORIGINATED. IN ADDITION, WHERE CUSTOMER REQUESTS A PHONE NUMBER OUTSIDE ITS RATE CENTER, EMERGENCY SERVICES WILL BE SIMILARLY AFFECTED.

MAHOGANY COMMUNICATIONS INC. OFFERS INTERNET CONNECTIVITY SERVICES TO ITS CUSTOMERS. INTERNET CONNECTIVITY PROVIDED BY THIRD PARTY PROVIDERS IS NOT A PART OF THE SERVICES AND NO WARRANTIES OF ANY KIND ARE MADE WITH RESPECT THERETO. FOR THE AVOIDANCE OF DOUBT, IF CUSTOMER CHOOSES TO USE THE PUBLIC INTERNET FOR VOICE CALLS (OR VOICE CALL SIGNALING), THE CUSTOMER RECOGNIZES THAT THE QUALITY OF VOICE CALLS MAY BE ADVERSELY AFFECTED AND THAT CUSTOMER MAY NOT BE ABLE TO COMPLETE CERTAIN OUTBOUND CALLS, INCLUDING, WITHOUT LIMITATION LOCAL, INTERNATIONAL AND EMERGENCY (E911).

IP Addresses

Internet Protocol numbers ("IP numbers") provided or assigned by Mahogany Communications Inc. in connection with the Services at all times remain the property of Mahogany Communications Inc. and are not portable, and Customer shall have no rights with respect thereto. Assignment of IP Numbers is subject to ICANN guidelines and is not guaranteed, and Mahogany Communications Inc. may modify such assignments at any time in its sole discretion. Customer shall provide an accurate host count at the time of the contract signing; such count shall be subject to verification by Mahogany Communications Inc.

Software

Any software incorporated into or provided for use in or with Mahogany Communications Inc. Services (whether initially, as part of maintenance or support or otherwise) is not sold, but rather is licensed solely for Customer's internal use in or with any applicable product strictly in accordance with the documentation and any other use restrictions applicable for that product. Such license (i) is non-exclusive, (ii) is non-sublicensable, (iii) is subject to the terms and conditions of this Agreement and (iv) does not include the right to (and Customer will not, directly or indirectly) modify, reverse engineer (except to the extent applicable statutory law expressly prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software (except as specifically authorized in documentation provided by Mahogany Communications Inc. for purposes of installation, support or maintenance), or to use the software or product for the benefit of any third party. Any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms herein

Maintenance

Mahogany Communications Inc. shall provide Customer notification of no-cost feature and function updates for the previously purchased options as they become generally available without additional charge to Mahogany Communications Inc.'s customers. The contents of all updates shall be decided upon by Mahogany Communications Inc. in its sole discretion. New features or features not currently subscribed by Customer are available at Mahogany Communications Inc.'s then-current list price. Mahogany Communications Inc. reserves the right to subcontract all or part of its obligations hereunder.

Order Acceptance

Unless otherwise stated on the Customer Order Form, the Service Term shall commence on the Service Commencement Date. This is the date that Mahogany Communications Inc. notifies Customer in writing that the Services are operational. Customer has seventy-two (72) hours from its receipt of Mahogany Communications Inc.'s notice to advise Mahogany Communications Inc., in writing, that the Services are not performing in accordance with Mahogany Communications Inc.'s specifications. Such notice shall describe with specificity the deficiencies in the Services. If Customer fails to notify Mahogany Communications Inc. within the timeframe referenced above, then the Services will be deemed accepted, and billing will commence, as of the date of Mahogany Communications Inc.'s notice. For the avoidance of doubt, Mahogany Communications Inc. may commence billing for the Services even if the Services is not operational if the delay is solely due to Customer's failure to provide information, access, equipment or other Services necessary to operate the Services

Payment

a) Customer agrees to pay for the initial Services at the rates specified on the Customer Order Form, or on any amendment hereto executed by the Parties. Additional Services added by the Parties via an accepted purchase order shall be charged at Mahogany Communications Inc.'s then-current list price unless otherwise agreed by Mahogany Communications Inc.. Notwithstanding anything contained herein to the contrary, Mahogany Communications Inc. shall be entitled to invoice Customer, and Customer shall be obligated to make payments, as of the Service Commencement Date, except only in cases of delay or non-acceptance directly attributable to Mahogany Communications Inc.. Delays in implementing the Services or faults attributable to Customer or its third party suppliers shall not relieve Customer of its payment obligations.

b) Variable rate charges including but not limited to inbound 800, directory and operator assistance, outbound U.S. long distance, international calling, conferencing, calling card calls and one-time charges are subject to change upon thirty (30) days prior written notice and shall be billed monthly in arrears. Fixed monthly recurring charges including seat charges

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and Equipment lease (if applicable) are fixed during the initial Service Term of this Agreement and shall be billed monthly in advance.

c) Fixed non-recurring charges, such as collocation, installation, training, access costs and minimum commitments shall be billed in advance each month. The invoice for the first months' fixed charges will be issued upon Service Commencement Date acceptance, as described herein. If the Service Commencement Date does not occur on the first day of the month, the invoice will be prorated based on the number of days remaining in that month.

d) Equipment purchases - Mahogany Communications Inc. will stage and configure Customer's equipment (when applicable) prior to Services Installation. Upon receipt of the equipment, Mahogany Communications Inc. will configure the Services and deliver the equipment to the Locations designated on the Customer Order Form. Shipments will be directed to the address indicated on the Customer Order Form. Unless specified in the Customer Order Form, Mahogany Communications Inc. will select the mode of shipment and the carrier. Mahogany Communications Inc. shall include shipping and insurance charges on invoices to Customer, which shall be Customer's sole responsibility. All risk of loss or damage to the hardware and Software while in transit shall be borne by and the sole responsibility of Customer with all such shipping costs to be borne solely by Customer. Equipment purchases will be billed upon shipment.

All charges are due within fifteen (15) days of the invoice date.

Late Payments

Overdue accounts are subject to a finance charge of the lesser of 1.5 percent per month or the maximum allowed by law. Accounts shall be deemed in default if not timely paid. If Customer's payment is returned to Mahogany Communications Inc. unpaid due to insufficient funds, Customer shall be subject to a returned check charge of \$35. If Customer fails to pay invoices in full when due, Mahogany Communications Inc. may terminate or suspend Services to Customer without any penalty or liability to Mahogany Communications Inc. Such termination or suspension shall not relieve Customer from its obligation to make payment under this Agreement. In the event that Mahogany Communications Inc. suspends Services to Customer, an account reinstatement fee of \$99 shall be required to reactivate each of such Services. Claims of fraudulent use of the Services or bad debt shall not operate to relieve Customer of its obligation to pay any charges when due.

Disputed Invoices / Remedy

If Customer has a bona fide, good faith dispute with any of the amounts on an invoice ("Disputed Amounts"), Customer must pay all amounts not in dispute, and provide Mahogany Communications Inc. with a written request for a billing adjustment together with all supporting documentation (in the form requested by Mahogany Communications Inc.) within thirty (30) days from the date of invoice on which the disputed amount first appeared. If Mahogany Communications Inc. does not receive this information within this thirty (30) day period, Customer's right to billing adjustment shall be waived. If Mahogany Communications Inc. denies, in good faith, Customer's dispute after reviewing the supporting documentation the Customer submits, Customer must remit all disputed amounts within fifteen (15) days of the date of Mahogany Communications Inc.'s written determination pending the outcome of any arbitration proceedings. If the parties cannot resolve the dispute after forty-five (45) days, either party may seek arbitration in accordance with the process described herein. While Customer may dispute any portion of an invoice, Customer may not withhold more than thirty percent (30%) of Customer's invoice, except in the case of gross billing errors (e.g., Customer's bill reflects a charge for \$5,000 rather than \$500).

Disputes shall be submitted for arbitration in Delaware County, Pennsylvania, before a single arbitrator agreed upon by the parties, or, if they are unable to agree, a single arbitrator appointed by American Arbitration Association (AAA). Such arbitration shall be governed by the commercial rules of the AAA. The arbitrator's decision will be final and entered into any court of competent jurisdiction. Each party shall be responsible for its attorney's fees and costs in connection with such arbitration.

Term / Commitments / Rates.

- a) Mahogany Communications Inc. reserves the right to pass through to Customer any additional fees or charges created by a change in regulation, new tax or similar surcharge or a change in the telephone or telecommunications fees with respect to Services that Mahogany Communications Inc. purchases from a third party to provide the Services. Such change in rates shall not give rise to any right of Customer termination.
- b) Mahogany Communications Inc. may, in its sole discretion, change rates and fees by notifying Customer sixty (60) calendar days in advance of the effective date, provided, however, that Customer may terminate this Agreement by providing Mahogany Communications Inc. written notice of termination during the sixty (60) calendar days following the date of such notice. Such cancellation shall be without penalty only if it explicitly references the rate change. For the avoidance of doubt, changes in rates or fees resulting from a Customer-initiated add, move, or change to the Services shall not constitute a rate increase by Mahogany Communications Inc. and shall not give rise to any right of

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cancellation by Customer.

d) Following completion of the Initial Service Term, (unless noted otherwise on the Mahogany Communications Inc. Service Agreement) the Agreement will automatically renew annually for a twelve (12) month Service Term until such time as either Party provides advance written notice to the other of its intent to terminate the Agreement. Such notice shall be provided at least sixty (30) calendar days prior to the end of the Initial Service Term or annual Service Agreement termination date.

e) If Customer cancels the Services before the end of the Service Term, such cancellation shall be deemed a breach of this Agreement for the purposes of Termination / Breach Section below. It is expressly understood and agreed by Customer that the charges for the Services purchased by Customer hereunder are based on the Customer's term commitment. The early termination fees set forth below represent the Parties' good faith estimate of Mahogany Communications Inc.'s damages in the event Customer terminates this Agreement prior to the end of the Service Term. Customer shall be responsible for One Hundred Percent (100%) of any and all fixed monthly charges for the Services through the end of the Contract Term.

f) In the event of any termination of this Agreement by either party, regardless of cause, Customer shall, at its sole cost and expense, return the Equipment leased or otherwise provided by Mahogany Communications Inc. within twenty (20) working days from the termination date in good working order, reasonable wear and tear excepted. Customer shall be liable to Mahogany Communications Inc. for any damage to the Equipment.

Termination / Breach

a) Mahogany Communications Inc. may suspend Services or, in its sole discretion, terminate this Agreement immediately without liability to Customer if: (i) Customer is in default of its payment obligations hereunder and has failed to remedy such default within ten (10) days of the date of Mahogany Communications Inc.'s written notice thereof; or (ii) Customer is in violation of any Federal or State law or regulation for Unauthorized transmission or storage of any information and fails to remedy its non-compliance within seventy-two (72) hours of Mahogany Communications Inc.'s written notice thereof. No such termination or suspension shall relieve Customer of its obligations to make any payments when due.

b) In addition to Mahogany Communications Inc.'s rights set forth in a), either Party may terminate this Agreement in the event that the other Party has committed a material breach of its obligations under this Agreement and has failed to remedy such breach within thirty (30) days of its receipt of the non-breaching Party's written notice thereof.

c) In the event that (i) Mahogany Communications Inc. terminates this Agreement for cause as set forth within this document or elsewhere in the Agreement, or (ii) Customer terminates this Agreement prior to the end of the Service Term without cause, then Customer shall be liable to pay to Mahogany Communications Inc. the following early termination fees, which represent a reasonable estimation of Mahogany Communications Inc.'s damages in the event of Customer's early termination or breach of this Agreement:

- i) an amount equal to One Hundred Percent (100%) of the aggregated monthly payments which Customer would have paid over the remainder of the Service Term, and,
- ii) all fees to third-party telecommunications providers that Mahogany Communications Inc. committed to pay in connection with Customer's commitment under this Agreement for the duration of the Agreement.

Confidentiality and Intellectual Property

Customer acknowledges and agrees that any proprietary property or content, including any copyrights, trademarks, service marks, patents or other intellectual property, that has been or will be provided by Mahogany Communications Inc. to Customer shall remain the sole and exclusive property of Mahogany Communications Inc., and no license or other interest with respect thereto is hereby granted to Customer.

Warranties and Liability

a. MAHOGANY COMMUNICATIONS INC. MAKES NO WARRANTY THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER, EXPRESSLY ACKNOWLEDGES AND AGREES THAT ALL USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. MAHOGANY COMMUNICATIONS INC. MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE GOODS, SERVICES OR SOFTWARE IT PROVIDES. MAHOGANY COMMUNICATIONS INC. ALSO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

b. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, LOST GOODWILL OR LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

c. THE TOTAL LIABILITY OF MAHOGANY COMMUNICATIONS INC. UNDER THIS AGREEMENT, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT EXCEEDING THE TOTAL PAYMENTS PAYABLE BY CUSTOMER FOR THE SERVICES IN THE THREE SUCCESSIVE MONTHS IMMEDIATELY BEFORE THE MONTH IN WHICH THE CLAIM ARISES. CUSTOMER ACKNOWLEDGES THAT THE

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FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT MAHOGANY COMMUNICATIONS INC. WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THIS LIMITATION OF ITS LIABILITY.

- d. MAHOGANY COMMUNICATIONS INC. SHALL HAVE NO LIABILITY ARISING FROM THE USE OF ITS SERVICES IN COMBINATION WITH THE SERVICES, PRODUCTS OR EQUIPMENT PROVIDED BY CUSTOMER OR THIRD PARTIES
- e. For those Services for which Mahogany Communications Inc. offers a system of credits or rebates for Services Interruptions, regardless of cause, such credits or rebates shall be Customer's sole remedy for service interruptions.

Indemnification

Customer will defend, indemnify and hold Mahogany Communications Inc. harmless from and against any and all liabilities, causes of action, lawsuits, penalties, claims or demands ("Claims") brought by third parties and resulting from or arising out of Customer's use of the Services.

Third Party Vendors

To the extent that Mahogany Communications Inc. is acting as a reseller with respect to hardware and software offered under this Agreement ("Equipment"), Mahogany Communications Inc. will provide Customer with the same warranties and support Services that Mahogany Communications Inc. receives from its vendors. Malfunctioning equipment will be repaired or replaced, at Mahogany Communications Inc.'s option.

Force Majeure

Mahogany Communications Inc. shall not be liable if its failure to perform under the Agreement is caused by damages, losses or other factors beyond Mahogany Communications Inc.'s control, including without limitation, failure or impairment of essential facilities, governmental action, war, civil disturbance, weather, general material shortages, labor strikes or walkouts, acts of God or other similar events.

No Waiver

Mahogany Communications Inc.'s failure to enforce any right hereunder shall not be deemed a waiver of such right or any other right hereunder.

Assignment

Customer may not assign its rights or obligations under the Agreement without the express written consent of Mahogany Communications Inc. Mahogany Communications Inc. may assign or novate all or part of its rights, benefits (including, without limitation, the benefits of this clause), interest, obligations and liabilities in connection with the Agreement to any party.

Modification

Except as may be stated otherwise herein, this Agreement may only be modified by an instrument in writing duly executed by authorized representatives of each of the Parties, making specific reference to this Agreement. No custom, industry standard or course of dealing between the Parties shall in any way serve to vary or alter the terms and conditions of this Agreement.

Relationship of the Parties/No Joint Venture

The Parties declare and agree that each Party is engaged in a business that is independent from that of the other party and that nothing contained herein shall be construed to imply a partnership, joint venture, principal and agent or employer and employee relationship between the Parties hereto.

Governing Law/Choice of Venue

This Agreement and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, excluding its laws relating to conflicts of laws. The Parties agree that the Federal District Court in Delaware as appropriate shall have exclusive jurisdiction over any case or controversy arising hereunder and shall be the proper forum in which to adjudicate such case or controversy.

Survival

The obligations of this Agreement which by their nature should survive the expiration or termination, of this Agreement, shall survive.

Severability

If any portion of this Agreement shall be deemed invalid or unenforceable, such invalidity or non-enforceability shall not invalidate or render unenforceable any other portion of this Agreement.

No Third Party Beneficiaries

No provision of this Agreement is intended, nor shall any be interpreted, to provide any person not a party to this Agreement with any remedy, claim, liability, reimbursement or cause of action or create any other third-party beneficiary rights.

Notice

Notice to Mahogany Communications Inc. shall be deemed given to Mahogany Communications Inc. upon actual delivery when delivered

To: **Mahogany Communications Inc. at 930 Old Harmony Rd., Suite A Newark, DE 19713** or such other address as may be select by Mahogany Communications Inc. from time to time.

Chesapeake Industrial Leasing Co., Inc.
8441 Belair Road, Suite 201
Nottingham, MD 21236
Phone: 410-661-5000
Fax: 410-661-5053

LEASE NO.

LESSEE

VENDOR

Exhibit 5

EQUIPMENT LOCATION:

DESCRIPTION: Model No., Catalog No. or other identification

Upon completion of the lease term, providing all rentals have been paid as agreed and Lessee is not in default under the terms of the lease, Lessee may purchase the above described equipment for the sum of one (\$1.00) dollar.

SECURITY DEPOSIT

\$ N/A

Beginning Date _____

SCHEDULE OF PAYMENTS DURING ORIGINAL TERM OF LEASE

Number of Months: Monthly Payments \$
Includes Applicable Sales/Use Tax

ADVANCE RENTALS PAYABLE AT THE SIGNING OF LEASE

Representing the \$ month and last month(s) rent

IMPORTANT: THIS LEASE CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AND ALLOWS THE LESSOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

IMPORTANT: VENDOR AND ITS REPRESENTATIVES ARE NOT THE AGENTS OF THE LESSOR AND HAVE NO AUTHORITY TO CHANGE OR MODIFY THE TERMS OF THIS LEASE IN ANY WAY.

THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED ABOVE.

GUARANTY

To induce Lessor to enter into this lease, the undersigned unconditionally guarantees to Lessor the prompt payment when due of all of Lessee's obligations to Lessor under this lease, including all attorney's fees and other expenses due by reason of Lessee's default and the payment on demand of the entire balance of Lessee's obligations if Lessee defaults in any manner, without first requiring Lessor to proceed against Lessee or the leased Equipment. The undersigned waives notice of acceptance hereof and of all other notices or demands of any kind to which the undersigned may be entitled. The undersigned consents to any extensions or modifications granted to Lessee and the release and/or compromise of any obligations hereunder. This is a continuing Guaranty and shall not be discharged or affected by death of the undersigned, shall bind the heirs, administrators, representatives, successors and assigns, and may be enforced by or for the benefit of any assignee or successor of Lessor. The undersigned consents to the jurisdiction and venue of any court located in Maryland. THE UNDERSIGNED REPRESENT THAT THIS GUARANTY IS EXECUTED TO INDUCE LESSOR TO ENTER INTO THIS LEASE AND EACH OF US REPRESENTS THAT HE HAS READ THIS GUARANTY AND THIS LEASE AND AGREES TO BE BOUND BY THEIR TERMS, AND EACH OF US UNDERSTANDS AND AGREES THAT NOTHING SHALL DISCHARGE OR SATISFY HIS LIABILITY HEREUNDER EXCEPT THE FULL PERFORMANCE AND PAYMENT OF THIS LEASE.

SIGNATURE _____
Personal Guarantor (NO TITLE)

SIGNATURE _____
Personal Guarantor (NO TITLE)

SIGNATURE _____
Personal Guarantor (NO TITLE)

DATE _____

CERTIFICATE OF ACKNOWLEDGEMENT AND ACCEPTANCE OF LEASED EQUIPMENT

Lessee hereby acknowledges receipt of the Equipment described in its lease with Lessor (the "Equipment") and accepts the Equipment after full inspection thereof as satisfactory for all purposes of the lease.

SIGNATURE X _____

TITLE _____

DELIVERY DATE _____

LESSEE AND GUARANTOR ACKNOWLEDGE HAVING READ ALL TERMS AND CONDITIONS SHOWN ON PAGES 2 AND 3 OF THIS AGREEMENT.

LESSOR: CHESAPEAKE INDUSTRIAL LEASING CO., INC.

SIGNATURE By _____ DATE _____
LESSOR

TITLE _____

LESSEE: _____
LESSEE (Full Legal Name)

SIGNATURE X _____ DATE _____

LESSEE

TITLE _____

TERMS AND CONDITIONS

1. LEASE, TERM, RENTAL: Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the equipment described above (hereinafter, with all replacements, substitutions, additions, attachments and accessories, referred to as the "Equipment"), on terms and conditions set forth above and below and continued on the reverse side hereof, for the term indicated above, commencing on the date (the "Commencement Date") that the Equipment is accepted by the Lessee and continuing thereafter until terminated as provided for herein. Unless otherwise provided herein, the monthly payments shall be payable on the corresponding day of each month thereafter, in the amount stated above, until the total rent and all other obligations of Lessee shall have been paid in full. All payments of rent shall be made to the Lessor at its address or at such other place as Lessor may designate in writing. Lessee hereby authorizes Lessor to insert in this lease the serial numbers and other identification data of the Equipment when determined by Lessor.

2. PURCHASE AND ACCEPTANCE; NO WARRANTIES. Lessee requests Lessor to purchase the Equipment from the Vendor and arrange for delivery to Lessee at Lessee's expense. Lessor shall have no responsibility for delay or failure of Vendor to fill the order for the Equipment. The Lessee represents that Lessee has selected the equipment leased hereunder prior to having requested the Lessor to purchase the same for leasing to the Lessee. Lessor has not selected or participated in the selection of the equipment or the Vendor or supplier of the equipment, or supplied the equipment, and Lessee agrees that the Lessor has made and makes no representations or warranties of any kind or nature, directly or indirectly, express or implied, as to any matter whatsoever, including the suitability of such equipment, its durability, its fitness for any particular purpose, its merchantability, its condition, and/or its quality, and as between Lessee, Lessor and Lessor's assignee, Lessee leases the equipment "as is". Lessor and Lessor's assignee shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused directly or indirectly by any equipment leased hereunder or the use or maintenance thereof or the failure of operation thereof, or the repairs, service or adjustment thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused. No representation or warranty as to the equipment or any other matter by the Vendor shall be binding on the Lessor nor shall the breach of such relieve Lessee of or in any way affect any of Lessee's obligations to the Lessor as set forth herein.

Lessor disclaims and shall not be responsible for any loss, damage or injury to persons or property caused by the equipment whether arising through the negligence of the Lessor or imposed by law. Important: Vendor and its representatives are not the agents of Lessor. Neither Vendor nor its representatives can waive, vary or alter any of the terms and conditions. Lessor does not warrant merchantability or fitness for any particular use of equipment and disclaims any other warranty express, implied or statutory. Lease payments will be due despite dissatisfaction with equipment for any reason. If the equipment is not properly installed, does not operate as represented or warranted by the Vendor, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against the Vendor and shall nevertheless pay Lessor all rent payable under this lease. Lessor agrees to assign to Lessee solely for the purpose of making and prosecuting any such claims any rights it may have against the Vendor for breach of warranty or representations respecting the equipment. Lessee has been informed that Lessee may have rights under the contract evidencing Lessor's purchase of the equipment and has been advised by Lessor to contact the Vendor or supplier for a description of such rights. Notwithstanding any fees that may be paid to Vendor or any agent of Vendor, Lessee understands and agrees that neither the Vendor nor any agent of the Vendor is an agent of Lessor and that neither the Vendor nor his agent is authorized to waive or alter any term or condition of this lease.

3. GOVERNING LAW. The Lessee and Guarantor(s) agree that certain material events and occurrences relating to this lease bear a reasonable relationship to the laws of Maryland. This lease shall be governed by the laws of Maryland and, unless applicable law requires otherwise, in the event of any legal proceeding arising out of or related to this lease, the Lessee and Guarantor(s) consent to the jurisdiction and venue of any court located in Maryland. Lessee and Guarantor(s) agree that this lease shall in all respects be considered under the Maryland commercial code, article 2a as a "finance lease" since Lessor is neither the Vendor or supplier of the equipment nor participated in the selection of the equipment or the Vendor or supplier. Lessee and Guarantor(s) hereby waive all rights and remedies under Article 2A Sections 508 through 522, inclusive, of the Maryland Commercial Code, including but not limited to, the right to repudiate or cancel this lease; the right to reject tender of the equipment; and the right to revoke acceptance of the equipment. In the event that Lessee shall be adjudged to be entitled to revoke acceptance of the equipment, Lessee shall indemnify Lessor for all payments made by Lessor to the Vendor or the supplier of the equipment, with interest at the highest legal rate.

4. LESSOR TERMINATION BEFORE EQUIPMENT ACCEPTANCE. If within 90 days from the date Lessor orders the Equipment, same has not been delivered, installed and accepted by Lessee (in form satisfactory to Lessor) Lessor may on 10 days written notice to Lessee terminate this lease and its obligation to Lessee.

5. TITLE. Lessor shall at all times during the term of this lease retain title to the Equipment. All documents of title and evidences of delivery shall be delivered to Lessor. Lessee shall not change or remove any insignia or lettering which is on the Equipment at the time of delivery thereof, or which is thereafter placed thereon, indicating Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, Lessee shall affix to the Equipment in a prominent place labels, plates or other markings supplied by Lessor stating that the Equipment is owned by Lessor. Lessee hereby authorizes Lessor to file this lease or a copy thereof or

any financing statements with respect to any security interest granted hereunder or any other agreement between the parties in any state or jurisdiction within the United States and Lessee hereby appoints Lessor, its officers, agents and attorneys as Lessee's attorney-in-fact with full authority to sign any such financing statements or other instruments in the name of Lessee as necessary or required to perfect Lessor's security interest. Lessee agrees to pay Lessor \$200.00 to offset Lessor's lease documentation processing costs and agrees to pay or reimburse Lessor for any filing, recording, stamp fees, or taxes arising from the filing or recordation of any such instrument or statement. Lessee shall at its expense protect and defend Lessor's title at all times keeping the Equipment free from all liens and claims whatsoever except for those created by or arising through Lessor, and shall give Lessor immediate written notice thereof and shall indemnify Lessor from any loss caused thereby. Lessee shall execute and deliver to Lessor upon Lessor's request, such further instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of Lessor's rights hereunder. Unless otherwise agreed in writing Lessee shall have no right to purchase or otherwise acquire title to or ownership of any of the Equipment.

6. CARE AND USE OF EQUIPMENT. Lessee shall maintain the Equipment in good operating condition, repair and appearance and protect the same from deterioration other than normal wear and tear, shall use the Equipment in the regular course of business only, within its normal capacity without abuse and in a manner contemplated by the Vendor, shall comply with the laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment, shall not make any modification, alteration, or addition to the Equipment (other than normal operating accessories or controls or software which shall when added to the Equipment become the property of the Lessor) without the prior written consent of Lessor, which shall not be unreasonably withheld, shall not so affix the Equipment to realty as to change its nature to real property or fixture, and agrees that the Equipment shall remain personal property at all times, regardless of how attached or installed. Lessee shall keep the Equipment at the location shown above and shall not remove the Equipment without the consent of Lessor, which shall not be unreasonably withheld. Lessor shall have the right during normal hours, upon reasonable prior notice to the Lessee and subject to applicable laws and regulations to enter upon the premise where the Equipment is located in order to inspect, observe or remove the Equipment or otherwise protect Lessor's interest.

7. NET LEASE: TAXES. Lessee intends the rental payments hereunder to be net to Lessor and Lessee shall pay all sales, use, excise, personal property, stamp, documentary and ad valorem taxes, license and registration fees, assessments, fines, penalties, and other charges imposed on the ownership, possession or use of the Equipment during the term of this lease; shall pay all taxes (except Federal or State net income taxes imposed on Lessor) with respect to the rental payments hereunder and shall reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. Lessee shall file all returns required thereof and furnish copies to Lessor.

8. INDEMNITY. Lessee shall and does hereby agree to indemnify and save Lessor its agents, servants, successors, and assigns harmless against and from any and all liability, damages, or loss including reasonable counsel fees, arising out of the ownership, selection, possession, leasing, renting, operation (regardless of where, how and by whom operated) control use, condition (including but not limited to latent or other defects whether or not discoverable by Lessee), maintenance, delivery and return of the Equipment. The indemnities and obligations herein provided shall continue in full force and effect notwithstanding termination of this lease.

9. INSURANCE. Lessee shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever in amounts determined by Lessor. The amount of such insurance shall be sufficient so that neither the Lessor nor Lessee will be considered a co-insurer. Lessee also shall carry public liability insurance, personal injury and property damage, covering the Equipment. All such insurance shall provide that losses, if any, shall be payable to Lessor, and all such liability insurance shall include Lessor as named insured. Lessee shall pay the premiums for such insurance and deliver to Lessor satisfactory evidence of the insurance coverage required hereunder. The proceeds of such insurance payable as a result of loss or damage to any item of the Equipment shall be applied to satisfy Lessee's obligations as set forth in Paragraph 10 below. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim to receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy.

10. RISK OF LOSS. Lessee hereby assumes the entire risk of loss, damage or destruction of the Equipment from any and every cause whatsoever upon delivery of the Equipment during the term of this lease and thereafter until redelivery to Lessor. In the event of loss, damage or destruction of any item of Equipment, Lessee at its expense (except in the extent of any proceeds of insurance provided by Lessee which shall have been received by Lessor as a result of such loss, damage or destruction) and at Lessor's option shall either (a) repair such item, returning it to its previous condition, unless damaged beyond repair, or (b) pay Lessor the sum of all unpaid rentals and other obligations due by Lessee to Lessor, discounted to present value at discount rate 4% per annum, and the Reversionary Value as set forth on the face of this lease, or (c) replace such item with a like item acceptable to Lessor, in good condition and of equivalent value, which shall become property of Lessor, included within the term "Equipment" as used herein, and leased from Lessor herewith for the balance of the full term of this lease.

11. PERFORMANCE BY LESSOR OF LESSEE'S OBLIGATION. In the event Lessee fails to comply with any provision of this lease, Lessor shall have the right, but shall not be obligated to effect such compliance on behalf of Lessee upon ten (10) days prior written notice to Lessee. In such event, all monies expended by and all expenses incurred by Lessor in effecting such compliance shall be deemed to be additional rental and shall be paid by Lessee at the time of the next monthly payment of rent.

12. DEFAULT. If any one of the following events (each an "event of default") shall occur, then to the extent permitted by applicable law, Lessor shall have the right to exercise any one or more of the remedies set forth in Paragraph 13 below (a) Lessee fails to pay any rental or any other payment hereunder when due and such failure continues for ten (10) days after written notice by Lessor or (b) Lessee or any Guarantor becomes insolvent or makes an assignment for the benefit of creditors, or (c) a receiver, trustee, conservator or liquidator of Lessee or any Guarantor or of all or a substantial part of its assets is appointed with or without the application or consent of Lessee or such Guarantor, or (d) a petition is filed by or against Lessee or any Guarantor under the Bankruptcy Code or any amendment thereto, or under any other insolvency law or laws providing for the relief of debtors, or (e) Lessee fails to pay when due any obligation to Lessor arising independently of this lease and such failure continues for ten (10) days, or (f) Lessee breaches any other covenant, warranty or agreement hereunder and such breach continues for ten (10) days after written notice thereof.

13. REMEDIES. On the occurrence of any event of default Lessor may, without further notice to Lessee or Guarantor(s) and in its sole discretion, exercise any one or more of the following remedies: (a) declare Lessee's or Guarantor(s) obligations hereunder immediately due and payable and recover as liquidated damages and not as a penalty an amount equal to: (i) all rentals and other sums due as of the date of default plus; (ii) the present value of all future rents and other sums payable to Lessor discounted at a rate of four percent (4%) per annum plus; (iii) reasonable attorney's fees equal to twenty-five percent (25%) of all sums due, (but not less than \$300.00); plus (iv) the then fair market value of the Equipment which the parties stipulate shall be the "Reversionary Value" as set forth on the face of this lease; less (v) any net proceeds of the disposition of the Equipment; plus (vi) all expenses as are incurred in repossession, rental, repair, refurbishment, seizure, storage, sale or reletting of the Equipment or disposition of other collateral and any charges, costs, expenses, interest or penalties properly assessable against Lessee pursuant to the provisions of this lease or any other agreement(s) between the parties; (b) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants and terms of this lease or to recover damages for breach thereof; (c) make demand on Lessee to assemble the Equipment and any other collateral as security for this lease, whereupon Lessee shall immediately assemble the Equipment and other collateral and make it available at a place designated by Lessor which is within the State wherein the Equipment was originally delivered to Lessee; (d) terminate this lease and take possession of the Equipment and any other collateral with or without notice to Lessee and without order of the court or other legal process, and without incurring any liability to Lessee for any damages incurred by reason of such taking. Lessee and Guarantor(s) hereby waive any and all rights to prior notice and to a judicial hearing with respect to repossession of the equipment or other collateral by Lessor; (e) lease said Equipment for a term and rental which may be less than, equal to or greater than the rent and term herein, or use the Equipment or sell or otherwise dispose of the Equipment for cash or credit, and upon such terms as Lessor may determine, free of any rights of Lessee. To secure Lessor's rights hereunder, Lessee and all Guarantors hereby empower and authorize any attorney to appear for them before any court having jurisdiction, and after one or more declarations filed, confess judgment against them, either jointly or severally, for the full amount owing hereunder (whether by normal maturity or acceleration), plus interest, court costs and attorney's fees of 25% (but not less than \$300.00) of the amount declared due, hereby waiving all exemptions. Lessee and the Guarantors hereby agree that Lessor has no duty to mitigate damages hereunder by first taking action to recover, sell or re-lease the equipment, exercise any other right or remedy which may be available to it under the Maryland Commercial Code or any other applicable law. The exercise of any of the foregoing remedies by Lessor shall not constitute the termination of this lease unless Lessor notifies Lessee in writing. No failure or delay on the part of Lessor to exercise any right or remedy hereunder shall operate as a waiver. No express or implied waiver by Lessor of any default shall constitute a waiver of any other default by Lessee or waiver of Lessor's rights. No remedy referred to in this section 13 is intended to be exclusive, but each shall be cumulative and concurrent to the extent permitted by law, and shall be in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

14. ASSIGNMENT OF RENTS: In the event of default, all right, title and interest of Lessee in and to all of the rents, royalties, issues, profits, revenue, income and other benefits of the Property from any lease or agreement pertaining thereto, (the "Rents and Profits"), are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Chesapeake Industrial Leasing Co., Inc. (hereinafter referred to as "Chesapeake") to be applied by Chesapeake in payment of the principal and interest and all other sums payable on the Lease, and of all other sums payable under the Lease Agreement. Prior to the happening of any Event of Default (as defined in the Lease Agreement), Lessee shall collect and receive all Rents and Profits.

15. LATE CHARGES. Upon the failure of the Lessee to pay within ten (10) days any rental or other sum due under this lease, Lessee shall also pay a late charge in the amount of 10% of such delinquent rent or other sum due, but not to exceed the maximum allowed by law. In the event any check issued by Lessee is returned unpaid for any reason, Lessee agrees to pay immediately to Lessor a returned check charge of \$25.00

16. PREPAYMENT. Lessee's obligation to pay in full all rent shall not be reduced by prepayment of any Rent due within sixty (60) days, except that if Lessee shall prepay in full all remaining obligations hereunder, Lessee's obligation to pay Rent for the remainder of the term shall be computed by discounting all remaining Rent of Lessee to Lessor to their then present value using a discount rate of 4% per annum, excluding sixty (60) days. This provision regarding prepayment shall not be construed to apply as a reduction of the amount of any option to purchase the Equipment, whether set forth in this Lease or in a separate agreement. Except for prepayment in full as provided for herein and unless otherwise agreed by Lessor in writing, acceptance by Lessor of any sum of money less than is due at any time shall not be deemed a release or accord and satisfaction for any greater sum due or to become due regardless of any restricted endorsement.

17. ASSIGNMENT NOTICE OF INTENDED ASSIGNMENT. Lessor may without consent of Lessee or any guarantor, assign or transfer this lease or any equipment, rent or other sums due or to become due hereunder, and in such event Lessor's assignee or transferee shall have the rights, powers, privileges and remedies of Lessor hereunder. Lessee and Guarantor(s) hereby acknowledges notice of Lessor's intended assignment of Lessor's interest in this lease and upon such assignment Lessee and Guarantor(s) agrees not to assert, as against Lessor's assignee, any defense, setoff, recoupment, claim or counterclaim, that it may have against Lessor whether arising under this Lessee transaction or otherwise. Lessee shall not assign this lease or any interests hereunder and shall not enter into any sublease with respect to the equipment covered hereby without Lessor's prior written consent.

18. RETURN OF PROPERTY. Upon the termination or expiration of this lease, or any extension thereof, the Lessee shall forthwith deliver, freight prepaid, the Equipment to the Lessor at an address designated by Lessor complete and in good order and condition, reasonable wear and tear alone expected, together with a disposition fee of 5% of the original cost of said Equipment. The Lessee shall also pay to the Lessor such sum as may be necessary to cover replacement for all damaged, broken or missing parts of the Equipment. If upon such expiration or termination the Lessee does not immediately return the Equipment to the Lessor, the Equipment shall continue to be held and leased hereunder and this lease shall thereupon be extended indefinitely as to the term at the same monthly rental, subject to the right of either the Lessee or the Lessor to terminate the lease upon thirty (30) days written notice, whereupon the Lessee shall forthwith deliver the Equipment to the Lessor as set forth in this Paragraph.

19. SECURITY DEPOSIT. Lessee agrees to make a security deposit in the amount, if any, set forth on the face of this lease, prior to the date of delivery of the Equipment, which security deposit Lessor may commingle freely with other monies in its possession. Lessor, at its election, may apply the security deposit, or any portion thereof, to reimburse Lessor for any sums paid by Lessor which under the terms of this lease are the obligation of Lessee, including the repair or refurbishment of the Equipment upon the expiration of the term of this lease, if Lessee fails to return the Equipment in condition required by this lease. Lessee shall not be entitled to any credit for its security deposit until such time as the Equipment has been returned to Lessor, whether Lessee's obligation to return the Equipment arose on the expiration of the term of this lease or upon the occurrence of any event of default hereunder. Upon the termination of the term of this lease and any renewals hereof, provided Lessee has fulfilled all its obligations to Lessor, the security deposit, less any deductions authorized herein, shall be returned to Lessee without interest.

20. FINANCIAL INFORMATION. Each of Lessee's financial statements supplied to Lessor truly and completely disclosed Lessee's financial condition as of the date of the statement, and there has been no material adverse change in Lessee's financial condition subsequent to the date of the most recent financial statement supplied to Lessor. Lessee has no material contingent obligations except as disclosed in such financial statements.

21. AFFIRMATIVE COVENANTS. Lessee covenants and agrees with Lessor that, so long as this Agreement remains in effect, Lessee will: (a) **NOTICES OF CLAIMS AND LITIGATION.** Promptly inform Lessor in writing of (1) all material adverse changes in Lessee's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Lessee or any Guarantor which could materially affect the financial condition of Lessee or the financial condition of any Guarantor. (b) **FINANCIAL RECORDS.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lessor to examine and audit Lessee's books and records at all reasonable times. (c) **FINANCIAL STATEMENTS.** Furnish Lessor with the following upon request: (i) **Annual Statements.** As soon as available, but in no event later than ninety (90) days after the end of each fiscal year, Lessee's balance sheet and income statement for the year ended, compiled by a certified public accountant satisfactory to Lessor; and (ii) **Tax Returns.** As soon as available, but in no event later than ninety (90) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns, prepared by a tax professional satisfactory to Lessor.

22. SUCCESSORS AND ASSIGNS. All covenants and agreements by or on behalf of Lessee contained in this Agreement or any related documents shall bind Lessee's successors and assigns and shall inure to the benefit of Lessor and its successors and assigns. Lessee shall not, however, have the right to assign Lessee's rights under this Agreement or any interest therein, without the prior written consent of Lessor.

23. MISCELLANEOUS. This lease contains the entire agreement between the parties and may not be altered, amended, modified, terminated or otherwise changed except by a writing signed by an executive officer of the Lessor. This lease shall be binding when accepted in writing by the Lessor. Lessee and Guarantor(s) waive, insofar as permitted by law, trial by jury in any action between the parties. Lessor, Lessee and Guarantor(s) intend this to be a valid and subsisting legal document, and agree that no provision of this lease which may be deemed unenforceable shall in any way invalidate any other provision or provisions of this lease, all of which shall remain in full force and effect. Any notice, intended to be served hereunder, shall be deemed sufficiently sent if sent by regular mail, postage prepaid, addressed to the party at the address contained hereon. This lease shall be binding upon the parties, their successors, legal representatives and assigns.